Supreme Court, U.S.
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NO. 83-382

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

BRUCE WARREN RUSH,

Petitioner,

v.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, et al.,

Respondents,

ON
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. "Questions Presented" on page (i) of Rush's Petition for a Writ of Certiorari, filed on September 7, 1983, are incorporated by reference. Also the following question is presented as a result of the content of Respondent's Opposition Brief filed on December 2, 1983.

2. Although not now conceded by Mr. Rush, yet even if the underlying divorce judgement was perfectly valid, would the implementation by an A.I.D. official of a Florida garnishment order violate the 5th Amendment and the Morton Case (708 F 2d 680, 689) doctrine for the want of subject matter jurisdiction over Mr. Rush's salary earned and located in Virginia? Would the above results follow if the procedures under URESA and the McElmoyle Case (38 U.S. 323, 10 L Ed 177, 182) doctrine were followed?

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This Reply Brief for Petitioner replies to the Brief for the Respondent in Opposition filed in this case (in Case No. 83-382) in this United States Supreme Court on December 2, 1983.

OPINION BELOW

See Page 2 of Petition which is incorporated here.

JURISDICTION

See Page 2 of Petition

THE STATEMENT OF THE CASE

See Pages 5 to 8 of Petition. In Addition Petitions for Writs of Certiorari were recently filed in this Court in Rush v. U. S. Agency for International Development, et al. in No. 83-382 on Sept. 7, 1983 and in United States v. Alan Morton in No. 83-916 on Dec. 2, 1983. This Rush Case and this Morton Case were recently decided by two different U. S. Circuit Courts of Appeal in Washington, D.C. Their decisions are in direct conflict on major critical issues and should be consolidated for argument and decision by this Court.

INTODUCTION

With the foregoing background, the arguments and comments which follow supplement

Rush's Petition for Certiorari and are a reply which responds to points raised by Respondent in his Opposition Brief.

The Opposition Brief raised two basic issues:

1. Want of subject matter jurisdiction as a violation of the 5th Amendment.

2. Loss of jurisdiction in personam even if once acquired.

Innitially Rush suggests that this Court review or read paragraph 4 of Mr. Rush's Motion to Defer as Amended which was filed in this Court on Oct. 27, 1983 and which is incorporated here by reference. It pinpoints the crucial point and common denominator for deciding the Morton and Rush Cases. It states a pivotal issue.

Next Rush suggests that this Court review and/or read pages 9 to 13 of his Petition which is an analysis and comparison of the Morton and Rush Cases. It is incorporated here also.

ARGUMENT

If this Court or any of its justices rules in favor of Mr. Rush on any of the issues listed below (in the order listed) then they need not proceed further in order to grant certiorari or to decide for Mr. Rush on the merits, viz.: (1) Subject Matter Jurisdiction (Pet. p. 10), (2) Jurisdiction in Personam (Pet. p. 10), (3) Extrinsic Fraud (Pet. pp. 34-35), (4) Miscellaneous Constitutional Issues (Pet pp. 18-33).

1. Subject Matter Jurisdiction: a. As stated on page 10, page 17 paragraph C and pages 21-22 of Rush's Petition, Rush stresses the necessity of subject matter jurisdiction. This was not only done in Rush's Petition as stated above but also in paragraph 4 of Petitioner's Motion to Defer ... (As Amended) filed in this Court on Oct. 27, 1983, a copy of which was served on Respondent. b. On the other hand the Respondent

on pages 5, 6, 7, 8 and 9 of his brief emphasises the importance of only jurisdiction in personam and ignores the importance and necessity for a court of competent jurisdiction to have both (1) subject matter jurisdiction, and (2) jurisdiction in personam for its writ of garnishment to be valid in the garnishment of Rush's salary.

Yet contrary to Respondent's suggestion to the contrary on page 5 line 19 of his brief, the Federal Circuit in Morton held in 708 F 2d at 686 that:

> "... Competent jurisdiction means both subject matter jurisdiction and personal jurisdiction"

2. Jurisdiction in Personam: Instead A.I.D. concentrated on Personal Jurisdiction which alone is not enough to validate a Florida garnishment order. This is stated in paragraph 1 above. However A.I.D. in a diversionary effort cited two cases and the Restatement of the Law in his brief (Res. Br. pp. 6 and 7). But this effort is subject

to attack as follows:

a. The A.I.D. cited Ferry Case is not in point; it involved the Michigan, Utah and Federal Courts concurring in requiring a Michigan bonded executor to perform his fiducary duty under state law to account for estate assets taken by him from Michigan to Utah. However the orders of these three courts are not enforcable in Virginia merely by sending certified copies via registered mail. Due process in Virginia is essential in garnishment, attachment, and/or execution through implemention in Virginia courts. However such enforcement can be implimented under procedures and doctrines of URESA and the McElmoyle Case Doctrine. (See: Pet pp. 20-21)

b. Even if once acquired and continuing, personal jurisdiction can be lost in child support cases if the child (or the child and his parents) acquire(s) a new residence or domicile outside of Florida. (See cases

cited on pp. 21-22 of Rush's Petitin and compare Michigan Trust Co. v. Ferry 228 U.S.346 (1913) referred to and analyzed above.

c. Underlying void judgments even if based on initial personal jurisdiction are subject both(Pet pp. 30-35) to direct attack (Res. Br. P. 8,line 27) or collateral attack (Pet - 32 and pp. 24-32). And if void for reasons stated in this Petition in paragraph 2 on page 25 (Pet. p 25) as disclosed by collateral attack (Pet. p. 32); then, as stated paragraph 2,a of Rush's Complaint (Appellate Court Appendix page 7a) the trial court failed to retain sufficient jurisdictional and constitutional facts (and thus failed to retain personal jurisdiction) for any further action other than granting a new trial, which it denied.

d. Respondent (Res. Br. pp. 6-7) cites the Restatement on Conflicts of Law and

Adams v. Saeger, 303 U.S. 59 concerning submitting to personal jurisdiction by filing a divorce case in Florida. However these "Migratory(in Transit), Reno Type Divorces" have been held to lack sufficient jurisdictional facts to warrant recognition in other states or under 28 USCS 1738. (See Pet. at paragraph D on page 31 and pp. 31-33). Compare: Glacken v. Glacken 28 A 2d, 213, 215 (N.J. 1942) (Pet. 31). Note: Pet. 23a.

3. Extrinsic Fraud and Denial of Fair Trial and Appeal by State Courts

a. Extrinsic fraud and substancial jurisdictional defects (Pet. 34-35) are exceptions to full faith and credit and 28 USCS 1738.

b. Also injunctions in federal courts to currently prevent federal officials from currently confiscating property in violation of the 5th Amendment are exceptios to and don't even involve full faith and credit or 28 USCS 1738. See Pet. 18-23.

c. If the state court action at trial or on appeal violated the 14th Amendment or adversely affected the underlying judgments so as render them void and subject to collateral attack, then they also are exceptions to full faith and credit and 28 USCS 1738.(Pet. 24-33)

4. Miscellaneous Statements by A.I.D. in Its Brief:

a. Contrary to statement at the bottom of page 4 (Res. Br.), from the outset Rush challenged the constitutionality of A.I.D.'s application of 42 USCS 659-662 and its regulations. (Pet. pp. 18-19 and compare Complaint paragraph 2 a above)

b. Since the Florida Court did not have subject matter jurisdiction of Rush's salary as required by the Morton Case, then contrary to A.I.D's statement on page 6 of its brief (Res. Br. p. 6), "there is ... reason to believe that the Federal Circuit would have decided ..."

the Rush Case in favor of Rush; '... for that reason ... we do ... urge that the Court grant certiorari."

5. Finally, concerning page 9, line of A.I.D.'s brief (Res. Br.) the U.S. government should not honor the Florida writ of garnishment in the absence of due process in garnishment (See Pet. p. 10 and p. 23-G) which under the Morton Case requires both subject matter and personal jurisdiction. In this respect the Congress does not have the power (by statute or otherwise) to authorize the custodian of Rush's property to transfer it to Mrs. Rush * simply by having her attorney mail (by registered mail) to that custodian, a certified copy of a Florida garnishment (or attachment) order. And, it is immaterial whether the custodian is a custodian: (1) of a bank deposit in a Chicago bank, (2) of stocks and bonds

* (or anyone else)

held by a broker in New York City, or (3) of the salary due Mr. Rush by A.I.D. in Virginia. Such transfers require due process (Pet. p. 23-G) such as that reconized under the McElmoyle Case or URESA(See: Pet. pp. 20-21 paragraphs B and C) and such due process in garnishment requires both subject matter jurisdiction and jurisdiction in personam.(Pet. p. 10)

As stated by Morton v. U. S. in 708 F 2d at 686: *

> "... Competent jurisdiction means both subject matter jurisdiction and personal jurisdiction."

CONCLUSION

The petition for a writ of certiorari should be granted ; the Morton and Rush Cases should be argued and decided together; and on the review on the merits in the Rush Case this Court should grant Mr. Rush the relief granted to Mr. Morton

* And, as confirmed by other cases cited in the Petition (at Pet. 14,and 21-22).

in the Morton Case

Respectfully submitted,

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